

A20466E
BARBARA BATEMAN, Ph.D., J.D. VOLUME 1 JUNE 7, 2008

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 PATRICIA N. and GUY N,)
 individually, and as Guardian)
5 Ad Litem of AMBER N., a minor,)
)
6 Plaintiffs,)
)
7 vs.)No. CV00-00252 MLR-LEK
)
8 PAUL LeMAHIEU, in his official)
 capacity as Superintendent of)
9 the Hawaii Public Schools;)
 BETH SCHIMMELFENNIG, in her)
10 official capacity as an)
 Education Specialist;)
11 PHYLLIS IDA, in her official)
 capacity as an employee of the)
12 Department of Education, State)
 Of Hawaii; and DEPARTMENT OF)
13 EDUCATION, State of Hawaii,)
)
14 Defendants.)
)

15
16 DEPOSITION OF BARBARA BATEMAN, Ph.D., J.D.,
17 MILLBRAE, CALIFORNIA
18 JUNE 7, 2008
19
20

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25 FILE NO.: A20466E

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1 remember reading this. Oh, a long time ago, like about
 2 seven years ago, I did read this document. I have not
 3 reread it. Do you want to know about it?
 4 **Q. Sure. Could you identify what you are looking**
 5 **at, Doctor?**
 6 A. I'm looking at pages --
 7 **Q. First of all, that looks like your January**
 8 **16th, 2001 report. And there appears to be a transcript**
 9 **attached to it, correct?**
 10 A. Well, I don't know -- I -- I'm not at all sure
 11 what this is.
 12 (Witness examining document.)
 13 A. This appears to be a letter written by me with
 14 some hearing testimony, which I gave in the Nahale
 15 matter, attached -- it's addressed to Stan Levin. And I
 16 am addressing certain matters that he asked me to
 17 address. They are numbered one through nine, I believe.
 18 **Q. Okay.**
 19 A. And I have no recollection of this -- of this
 20 document --
 21 **Q. Okay.**
 22 A. -- but it is in my file.
 23 **Q. Okay. Is that something you reviewed to**
 24 **prepare for today?**
 25 A. No.

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1 **Q. I'm just asking you what you read --**
 2 A. Yeah, I'm surprised to see that. I -- I
 3 obviously wrote it, but I have recollection.
 4 **Q. Okay.**
 5 A. I did review the hearing officer's decision in
 6 the matter of Nahale. I reviewed Dr. Houck's report
 7 dated 11/15/03. I reviewed portions of the -- of the
 8 Amended Complaint. And I reviewed parts of the
 9 transcript of the hearing in this matter.
 10 **Q. That the --**
 11 A. And I believe the pieces that I have are Dr.
 12 Siegel and Mrs. Nahale.
 13 **Q. Is that the due process hearing?**
 14 A. Yes.
 15 **Q. Can I see that file, Doctor?**
 16 A. Yes.
 17 **Q. Were these loose papers part of your file, as**
 18 **well?**
 19 A. Yeah. And this is the one of which I have no
 20 recollection.
 21 **Q. Okay. And Doctor, the items you've just**
 22 **described to me come from a -- a yellow manila file**
 23 **entitled Amber N.?**
 24 A. Yes.
 25 **Q. Okay. And there are some other things in this**

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1 **file. There are some handwritten notes?**
 2 A. Yes.
 3 **Q. Okay. Two pages of handwritten notes**
 4 **pertaining to Amber Nahale's school?**
 5 A. To -- pertaining to the school observation, and
 6 one-half pertaining to home observation.
 7 **Q. Okay. And Doctor, I don't know if these were**
 8 **placed mistakenly in this Amber Nahale file, but you**
 9 **appear to have two photocopies of Exhibit 5 and 6 to the**
 10 **Stephen L. case, your deposition in the Steven L. case,**
 11 **photocopies of handwritten notes.**
 12 **Do you recall that from yesterday?**
 13 A. Yes.
 14 **Q. Okay. These were not supposed to be part of**
 15 **this file, or are they?**
 16 A. You just gave these to me this morning. And
 17 this is the only file I had with me, so I put these two
 18 pieces of paper in this file so I wouldn't lose track of
 19 them.
 20 **Q. Okay.**
 21 A. This morning I did that.
 22 **Q. All right. When you came here?**
 23 A. Correct.
 24 **Q. Okay. Thank you.**
 25 MR. USHIRODA: Off the record.

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1 (Discussion off the record.)
 2 MR. USHIRODA: Back on, Jane.
 3 **Q. Doctor, we've just gone over your yellow manila**
 4 **file entitled Amber Nahale, which contains documents**
 5 **pertaining to the Nahale case. You have that -- this**
 6 **yellow file. And it's my understanding that you also**
 7 **have some documents that may be sitting -- that are**
 8 **sitting on your kitchen table?**
 9 A. Are sitting on my kitchen table.
 10 **Q. In Crestview, Oregon?**
 11 A. Correct.
 12 **Q. And do you know about how many documents, you**
 13 **know, like a stack?**
 14 A. Yeah. The Nahale stack is shorter than the
 15 others. I would guess it to be on the order of an inch.
 16 And I would suppose that there are maybe six IEPs,
 17 about, and a very small stack of BOE forms that I don't
 18 even know what they are.
 19 **Q. Okay. When you reviewed those -- those**
 20 **documents that are on -- in Oregon, as we speak right**
 21 **now, did you make any notations or markings on those**
 22 **documents? Like sometimes when people review**
 23 **transcripts, they make notes in this margin or things**
 24 **like that?**
 25 A. No, I -- I didn't actually review them. I

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4 (Pages 10 to 13)

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1 **Q. On this last trip in May, did you get a chance**
 2 **to meet Amber?**
 3 A. Oh, yes.
 4 **Q. Was that the first time you met Amber?**
 5 A. I believe so.
 6 **Q. When you testified at the due process hearing,**
 7 **I believe that was in 2001, did you -- you didn't meet**
 8 **with the Nahales then?**
 9 A. Not that I recall. I --
 10 **Q. Okay. Now, what is your best recollection of**
 11 **when Mr. Ellis first contacted you about the Nahale**
 12 **case?**
 13 A. I have no recollection. But from this letter,
 14 I would assume it was in late 2000 or perhaps earlier.
 15 I --
 16 **Q. Let me get some housekeeping out of the way,**
 17 **and then we'll proceed.**
 18 **(Whereupon, Defendants' Exhibit 3**
 19 **was marked for identification.)**
 20 **BY MR. USHIRODA:**
 21 **Q. Doctor, I'm handing you what I've marked as**
 22 **Exhibit 3 to your deposition.**
 23 **Would you please identify that for the record.**
 24 **(Witness examining document.)**
 25 A. This is a report that I prepared 5/25/08 and

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1 **Q. So --**
 2 A. So this -- from this, I can conclude that, in
 3 fact, he had contacted me prior to the letter that I
 4 wrote.
 5 **Q. Okay.**
 6 A. This is the document of which I have no
 7 recollection.
 8 **Q. Okay. And you're referring to Exhibit 5?**
 9 A. Five, yes.
 10 MR. USHIRODA: You already have those, Stan. I
 11 gave you copies of those.
 12 We are off the record.
 13 (Discussion off the record.)
 14 MR. USHIRODA: Okay. Back on.
 15 (Whereupon, Defendants' Exhibit 6
 16 was marked for identification.)
 17 **BY MR. USHIRODA:**
 18 **Q. You know, Doctor, I'm handing you what I've**
 19 **marked as Exhibit 6 to your deposition. It is your**
 20 **handwritten calculations about the approximate time you**
 21 **spent on this case this year; is that correct?**
 22 A. Yes.
 23 MR. USHIRODA: Off the record.)
 24 (Discussion off the record.)
 25 (Whereupon, Defendants' Exhibit 7

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1 sent to Mr. Levin on -- report on Amber Nahale.
 2 (Whereupon, Defendants' Exhibit 4
 3 was marked for identification.)
 4 **BY MR. USHIRODA:**
 5 **Q. Doctor, I'm also handing what you what I've had**
 6 **marked as Exhibit 4 for the record -- for your**
 7 **deposition.**
 8 **Would you please identify that for the record.**
 9 **(Witness examining document.)**
 10 A. This is a report submitted -- or written by me
 11 July 9th, '03, and submitted to Mr. Levin on Amber
 12 Nahale.
 13 (Whereupon, Defendants' Exhibit 5
 14 was marked for identification.)
 15 **Q. And Doctor, I'm also handling you what I've**
 16 **marked as Exhibit 5 to your deposition.**
 17 **Could you please identify that for the record.**
 18 **(Witness examining document.)**
 19 A. Yes. This is a letter written by me January
 20 16th, '01, to Mr. Ellis, answering questions of his and
 21 attaching excerpts from the -- from my testimony at
 22 hearing.
 23 **Q. Do you know what date that testimony was given**
 24 **on?**
 25 A. October 18th, 1999.

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1 was marked for identification.)
 2 **BY MR. USHIRODA:**
 3 **Q. Dr. Bateman, I'm handing you what I've marked**
 4 **as Exhibit 7 to your deposition. It is two pages of**
 5 **handwritten notes.**
 6 **Could you please identify that for the record.**
 7 A. These are notes that I took on May 20th, '08, a
 8 school observation of Amber.
 9 **Q. Thank you.**
 10 **(Whereupon, Defendants' Exhibit 8**
 11 **was marked for identification.)**
 12 **BY MR. USHIRODA:**
 13 **Q. And I'm also handing you what I've marked as**
 14 **Exhibit 8 to your deposition.**
 15 **Could you please identify that for the record.**
 16 **(Witness examining document.)**
 17 A. I am uncertain as to the date. It says May 19,
 18 but that doesn't seem right to me. These are notes that
 19 I took during a visit to Amber's home.
 20 **Q. Would it be fair to say that that visit to**
 21 **Amber's home occurred this year?**
 22 A. Yes, it's -- it was in May of '08.
 23 **Q. Just not certain of the specific date?**
 24 A. Correct.
 25 **Q. Okay. And that visit to Amber's home in May**

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6 (Pages 18 to 21)